

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ronald J. Lebel et al.

Title: AMBULATORY MEDICAL
APPARATUS WITH HAND
HELD COMMUNICATION
DEVICE

Appl. No.: 09/768,196

Filing Date: 1/22/2001

Examiner: Matthew F. Desanto

Art Unit: 3763

Confirmation No.: 1919

REPLY BRIEF UNDER 37 CFR 1.193

Mail Stop: Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant presents this Reply Brief in response to the Examiner's Answer filed on January 29, 2007.

An oral hearing is being requested concurrently herewith along with the appropriate fees.

In the Examiner's Answer, the rejections raised in the final Office Action dated April 20, 2006, were essentially repeated. Accordingly, Applicant's comments on pages 3-12 address those rejections and are re-emphasized and incorporated herein by reference.

In addition, the Examiner's Answer includes a section (10) titled "Response to Argument." The present Reply Brief addresses comments included in that section (10) of the Examiner's Answer. In that section of the Examiner's Answer, the Moon et al. patent is mischaracterized by equating a graphic display of one or more meters as "a plurality of patient

programmable options on at least one first menu.” It is clear that the rejections of the claims are erroneously based on that mischaracterization and, as a result, the rejections are not proper and should be reversed.

More specifically, the Examiner stated that the Moon et al. patent is used in the rejections “to show the level of skill in the display art when dealing with the adding and removing of icons or options.” (Examiner’s Answer, pg. 9, ll. 11-14) The specific language of claim 12 that relates to displaying “options” is recited as follows:

“wherein the CD display is controlled to depict a plurality of patient programmable options on at least one first menu and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu such that when disabled the at least one patient programmable option is no longer displayed on the at least one first menu as an option while at least one enabled option is displayed on the at least one first menu.” (underlines added for emphasis)

The display configurations described in the Moon et al. patent do not anticipate or suggest the above features of claim 12. The Examiner has acknowledged that other references cited in the rejections fail to meet the above-quoted features of claim 12 (Examiner’s Answer, pg. 9, ll. 10-11, pg. 10, ll. 10-12 and pg. 11, ll. 21-22.) Accordingly, even if the Moon et al. patent were somehow combined with the other cited references in the manner suggested by the Examiner (which combination Applicant traverses in the Appeal Brief), the result would not meet or suggest the claimed invention.

As described below, Moon et al. do not describe or suggest first and second menus as recited in claim 12, or a plurality of programmable options on a first menu (or screen) in combination with a second menu (or screen) from which at least one of those programmable options may be enabled or disabled as recited in claims 12 and 29.

Moon et al. describe displaying graphics of meters and icons in a display area 140 (Moon et al., Figs 3-6). Moon et al. refer to the display area 140 as a “status bar.” The status bar 140 has a small meter area 450 for a sequencing or rotating meter, while fixed (non-rotating) meters

that never leave the screen are at other locations along the status bar 140. (Moon et al., col. 5, ll. 53-56 and col. 6, ll. 33-49). The status bar 140 is not a menu, but is simply a display (albeit a display having a rotating display area and a fixed display area). The meters or icons displayed on the status bar 140 are simply visual information and are not programmable from the status bar 140. Because the status bar 140 merely displays the meters or icons as visual information and provides no mechanism for selecting (programming) the options, Moon et al.’s meters or icons on the status bar 140 are not programmable options on a first menu.

The term “menu” has an ordinary meaning in computer display arts as a display of items from which a user can select. The ability to select an item from the menu is a key difference between a simple display of information and a menu. Attached is a copy of a page from Merriam-Webster’s Collegiate Dictionary, 726 (10th ed. 1988) that shows a common definition of “menu” (in the context of a computer display) as “a list shown on the display of a computer from which a user can select the operation the computer is to perform.” Moon et al.’s display of meters or icons on the status bar 140 is not a list from which a user can select anything. Instead, Moon et al.’s status bar 140 is simply a display of visible information.

Also, in describing the Moon et al. patent as “adding and removing icons *or options*” (italics added for emphasis)(Examiner’s Answer pg. 9, l. 14), the Moon et al. patent is erroneously mischaracterized. Moon et al. do not refer to the meters or icons in the status bar 140 as “*options*.” As discussed above, the status bar 140 displays meters and icons as visible information, but no mechanism is provided for opting any of the meters or icons from the status bar 140.

By mischaracterizing the meters or icons in the status bar 140 as “options” (instead of displayed information) the Examiner is apparently referring to the functions described by Moon et al. with respect to the “Meters customization panel” in Fig. 7 of the Moon et al. patent. In particular, the Examiner states “[t]he screen displays are edited by the user as described in column 7, line 11-28 and column 8, line 36-45, which allow the user to remove or add certain ‘meters’ to a specific screen, thus changing the screen to display or not display a certain option.” (Examiner’s Answer, pg. 9, l. 19 to pg. 10, l. 1.)

The display screen panel shown in Fig. 7 of the Moon et al. patent is used to customize the status bar 140 (of the display in Figs. 3-6). From an area 330 on the panel in Fig. 7, fixed meters can be added or removed from the status bar 140 display. Similarly, from an area 350 on the panel in Fig. 7, rotating meters can be added or removed from the status bar display. Thus, by using areas 330 and 350 of the panel in Fig. 7, a user may customize the display in the status bar 140 to add or delete meters or icons from the display. However, once the panel in Fig. 7 has been used to select meters or icons for display on the status bar 140, the user shifts to a different display screen panel (e.g., as shown in Figs. 3-6) to view the status bar 140. As described above, once the user has shifted to a display screen on which the status bar 140 (and meters or icons) are displayed, the meters or icons now set on the status bar 140 are merely visible display information, not programmable options on a menu.

In that regard, referring to the above-quoted language from claim 12, Moon et al.'s status bar 140 simply displays visible information and, thus, could not be a display that is "controlled to depict a plurality of patient programmable options on at least one first menu" In addition, Moon et al.'s status bar 140 provides no mechanism for enabling or disabling options and, thus, could not be "a second menu" from which "at least one of the patient programmable options may be enabled and disabled." While Moon et al.'s panel in Fig. 7 allows a user to add or delete meters or icons from the status bar 140, Fig. 7 could not be both the first and second menus recited in claim 12. Accordingly, Moon et al. do not disclose or suggest a display that is "controlled to depict a plurality of patient programmable options on at least one first menu and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu."

In addition, while Moon et al.'s panel in Fig. 7 allows a user to add or delete meters or icons from the status bar 140, the addition or deletion of a meter or an icon to the status bar 140 does not enable or disable a programmable option. Moon et al. define the term "meter" as used in their patent as "a 'small' application program that constantly monitors the computer system in the background (or checks the system periodically), and displays the information graphically." (Moon et al., col. 2, ll. 39-43 and also at col. 5, ll. 49-53.) Moon et al.'s Fig. 7 is described as allowing the user to add or delete display graphics from the status bar 140. However, Moon et al.

provide no description or suggestion of enabling or disabling any of the meter programs. Indeed, Moon et al.’s definition of a meter as an application program that is constantly running in the background teaches that the meters are always enabled (constantly running). Thus, according to Moon et al.’s teaching, it is only the graphic display of the meter or icon application that is added or deleted to the status bar 140 from the panel in Fig. 7, while the actual application program remains running in the background regardless of whether or not the graphic of the meter or icon is shown on the status bar. Therefore, Moon et al. do not teach or suggest “a second menu” from which “at least one of the patient programmable options may be enabled and disabled at different times” as recited in claim 12.

Accordingly the Examiner’s reliance on the Moon et al. patent as describing the above-quoted features of claim 12 is respectfully traversed. A primary basis for the rejections (that, according to the Examiner’s Answer, pg. 12, ll. 2-4, “[o]nce the graphic interface of Moon et al. is implemented with the basic programming of Tune et al. and Causey et al. III, applicant’s invention would be anticipated”) is erroneous.

As described above, Moon et al. (as well as each of the other patents cited in the rejections) neither describe nor suggest a “CD display” that is “controlled to depict a plurality of patient programmable options on at least one first menu and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu such that when disabled the at least one patient programmable option is no longer displayed on the at least one first menu as an option while at least one enabled option is displayed on the at least one first menu” (underlines added for emphasis), as recited in claim 12. Accordingly, even if the Moon et al. patent were somehow combined with Tune et al. (USP 5,630,710) and Goedeke (USP 5,904,708) or somehow combined with Causey, III et al. (USP 6,641,533) in the manner suggested by the Examiner (which combinations Applicant traverses in the Appeal Brief), the result would not meet or suggest the claimed invention.

The above comments are focused on independent claim 12. However, similar comments apply to the rejection of claim 29. While claim 29 refers to first and second display screens (instead of first and second menus), claim 29 recites other features that are similar to those discussed above with respect to claim 12, including a CD display that is “controlled to depict a

plurality of patient programmable options on at least one first display screen and wherein at least one of the patient programmable options may be enabled and disabled at different times from a second display screen such that when disabled the at least one patient programmable option is no longer displayed on the at least one first display screen as an option while at least one enabled option is displayed on the at least one first display screen.”

As discussed above, the Moon et al. reference does not disclose or suggest features recited in claims 12 and/or claim 29, including a “CD display” that is “controlled to depict a plurality of patient programmable options on at least one first menu (or screen)” and “wherein at least one of the patient programmable options may be enabled and disabled at different times from a second menu (or screen).” As explained in the Appeal Brief and acknowledged by the Examiner, other references cited in the rejection (including Tune et al. and Causey, III et al.) fail to teach those features. Indeed, none of the references of record has been established as meeting or suggesting the above features of claims 12 and 29.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

In view of the forgoing and Applicant’s Appeal Brief, it is respectfully submitted that the examiner has failed to establish *prima facie* obviousness. Accordingly, the rejections of claims 6-29 are traversed and should be reversed.

Respectfully submitted,

By: 
Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933

Date: March 29, 2007
FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (310) 975-7963
Facsimile: (310) 557-8475



Merriam- Webster's Collegiate® Dictionary

TENTH EDITION

Merriam-Webster, Incorporated
Springfield, Massachusetts, U.S.A.



A GENUINE MERRIAM-WEBSTER

The name *Webster* alone is no guarantee of excellence. It is used by a number of publishers and may serve mainly to mislead an unwary buyer.

Merriam-Webster™ is the name you should look for when you consider the purchase of dictionaries or other fine reference books. It carries the reputation of a company that has been publishing since 1831 and is your assurance of quality and authority.

Copyright © 1998 by Merriam-Webster, Incorporated

Philippines Copyright 1998 by Merriam-Webster, Incorporated

Library of Congress Cataloging in Publication Data

Main entry under title:

Merriam-Webster's collegiate dictionary. — 10th ed.

p. cm.

Includes index.

ISBN 0-87779-708-0 (unindexed : alk. paper). — ISBN 0-87779-709-9 (indexed : alk. paper). — ISBN 0-87779-710-2 (deluxe indexed : alk. paper). — ISBN 0-87779-707-2 (laminated cover, unindexed).

1. English language—Dictionaries. I. Merriam-Webster, Inc.

PE1628.M36 1998

423—dc21

97-41846

CIP

Merriam-Webster's Collegiate® Dictionary, Tenth Edition principal copyright 1993

COLLEGIATE is a registered trademark of Merriam-Webster, Incorporated

All rights reserved. No part of this book covered by the copyrights hereon may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, taping, or information storage and retrieval systems—without written permission of the publisher.

Made in the United States of America

21222324RMcN98

